

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

CRIMINAL #04-10288-RWZ

FILED  
CLERK'S OFFICE  
MAR 10 2005 A 10:30

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UNITED STATES

v.

PHILIP ALBERT

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**DEFENDANT, PHILIP ALBERT'S MOTION FOR LEAVE TO  
FILE INDIVIDUAL MOTIONS FOR DISCOVERY AND TO  
EXTEND THE DEADLINE TO FILE MOTIONS FOR DISCOVERY**

Philip Albert, the defendant in the above-captioned criminal case, hereby moves this Court for leave to file individual discovery motions and to extend the deadline to file any motions for discovery. As grounds therefore, the defendant states as follows:

1. On or about January 27, 2005, a status conference was held before Magistrate Judge Charles B. Swartwood, III.
2. Following the status conference, a status report issued on January 31, 2005. The status report indicated that counsel for all defendants shall confer for the purposes of filing a consolidated discovery motion on behalf of all defendants by March 4, 2005. The report further stated that if a defendant seeks to file individual discovery related motions, counsel shall file a timely motion stating the grounds for the request.
3. The Government has identified over 200 items of audio/videotaped surveillance evidence in this case. As more particularly described in the attached affidavit, counsel for Philip Albert is continuing to review the audio-visual evidence in this


case. This process is extraordinarily time consuming because of the volume of evidence and certain limitations put in place by the Government.

4. Counsel for Philip Albert must review all of the audio-visual evidence before determining what discovery motions, if any, should be filed. It is anticipated that if any discovery motions are filed, they will be specific and unique to alleged conversations and meetings that occurred between undercover law enforcement agents and Mr. Albert. Therefore, Mr. Albert requires leave to file individual discovery motions if the issues cannot be resolved in accordance with Local Rule 116.
5. The defendant, Philip Albert, further moves this Court to extend the deadline for his counsel to file any discovery motions until April 15, 2005. This extension will allow his counsel additional time to complete his review of the audio-visual evidence in this case. This extension will also provide his counsel the opportunity to inform the Court of their progress during the further status conference scheduled for April 13, 2005 without further intervention by the Court.

WHEREFORE, the defendant, Philip Albert, requests that this Court grant him leave to file individual discovery motions and to extend the deadline to file any discovery motions until April 15, 2005. In further support thereof, the defendant submits the attached affidavit of his counsel, Marc R. Salinas.

Respectfully submitted,

Philip ALBERT  
By his attorney,

A handwritten signature in black ink, appearing to read 'John Andrews', followed by a horizontal line.

John Andrews – BBO #554259  
Marc R. Salinas – BBO #644655  
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Certificate of Service

I hereby certify that on this day a true copy of the within document was served upon the attorney of record for the United States, AUSA David G. Tobin, United States Attorney's Office, 1 Courthouse Way, Suite 9200, Boston, MA and a courtesy copy to Lisa Roland, Courtroom Clerk for Honorable Charles B. Swartwood, III, United States Magistrate Judge by mail, as well as to the following counsel of record:

UNITED STATES V. CARLOS ESPNOLA  
CRIMINAL NO. 04 10288 RWZ  
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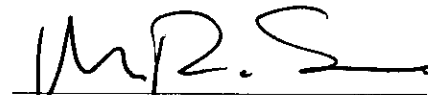
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**AFFIDAVIT OF MARC R. SALINAS**

I, Marc R. Salinas, do hereby depose and state as follows:

1. I am an attorney admitted to practice law in the Commonwealth of Massachusetts. Together with my firm, Andrews & Updegraph, P.C., we are counsel for the defendant, Philip Albert.
2. The United States of America has identified what appears to be over 200 items of audio and videotaped surveillance evidence in this case. The Government has provided to counsel a log of all the surveillance evidence and made the evidence available for inspection at the Office of the United States Attorney. This evidence is available for inspection so that each defendant is not required to incur the costs associated with reproduction of evidence irrelevant to their defense.
3. My office has arranged to inspect the audio-visual evidence in this case on three (3) separate dates. The United States Attorney's Office requires that the inspections of the audio-visual evidence be supervised by their office. As such, each visit was limited to three (3) hours.
4. To date, our office has reviewed approximately forty (40) audio/videotapes. Approximately ten (10) did not work, were blank or scrambled.
5. One (1) appointment was cancelled by the United States Attorney's Office and one (1) more was re-scheduled.
6. Our office is waiting to hear back from the United States Attorney's Office to schedule additional dates to review the audio-visual evidence in this case.

7. Prior to filing *Defendant, Philip Albert's Motion for Leave to File Individual Motions for Discovery and to Extend the Deadline to File Motions for Discovery*, I attempted to reach Assistant United States Attorney, David Tobin to obtain his assent to the motion and discuss the issues raised in the motion. I was informed that he is out of the office until March 7, 2005 - after the deadline for filing a consolidated motion for discovery passes.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS  
SECOND DAY OF MARCH, 2005.

  
\_\_\_\_\_  
Marc R. Salinas